IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 162 OF 2007

1. Bhavik D. Rajani and anr. ..Petitioners

Vs.

1. Indresh Advani and anr. ..Respondents

Mr. Shirish Gupte, Senior Advocate with Mr.Amol Phaujdar and Mr. M.P. Dalvi for petitioners.

Ms. Mili V. Thakkar a/w Mr. C.D. Abuwala i/by M/s. Dave and Co. for respondent no.1.

Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : September 19, 2007.

P.C.:

1. Heard the learned counsel for the respective parties. The petitioners are aggrieved by the order of process issued by the learned Metropolitan Magistrate, 14th Court, Girgaum, Mumbai in C.C. No. 2954/SS/2005 and, therefore, they pray for quashing and setting aside the proceedings in the said complaint filed under Section 138 of the Negotiable

Instruments Act, 1881 by invoking the inherent powers of this court under Section 482 of Cr.P.C. They had approached the Sessions Court by filing Revision Application under Stamp No. 6176 of 2006 and as the same was filed belatedly, they had filed an application for condonation of delay registered as Misc. Application No. 1813 of 2006. The application for condonation of delay came to be rejected by the learned Additional Sessions Judge, Greater Mumbai on 21/11/2006 and hence this petition filed on or about 25/1/2007.

2. At the first instance, the learned counsel for the petitioners submitted that there were in all three dishonoured cheques and three separate, but identical complaints came to be filed under Section 138 of the N.I. Act. In the two complaints the learned Magistrate was pleased not to issue process against the present accused nos.2 and 3 and those two complaints continued only against accused no.1, the partnership firm and accused no.4 who is one of the partners and had signed the dishonoured cheques. He, therefore, submitted that there was no reason to make

a distinction in this third case continuing the accused nos.2 and 3 to face the trial when they are not required to face the trial in the other two cases. Secondly, he relied upon the decisions in the case of Monaben Ketanbhai Shah and anr. vs. State of Gujarat and ors. **[(2004) 7 SCC 15]** and S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and anr. **[(2007) 4 SCC 70]** and submitted that on account of lack of averments pointing out the responsibility or role of accused nos.2 and 3 in the day to day management of the accused no.1-firm, the prosecution initiated against accused nos.2 and 3 was required to be quashed and set aside under the inherent powers under Section 482 of Cr.P.C. He further pointed out that in the complaint there are no specific details provided against the contribution made by the accused nos.2 and 3 in the day to day affairs of the accused no.1-firm and in the absence of such averments the complaint was required to be quashed and set aside, qua accused nos.2 and 3.

3. The learned counsel for the respondent no.1, on the other hand, has referred to the statutory

notice, the reply sent to the same by the accused or on their behalf, the Partnership Deed and submitted that it is a matter of evidence to be adduced before the trial court as to whether the accused nos.2 and 3 are responsible and in-charge of the day to day affairs of the accused no.1-firm and it cannot be, in the facts of this case, said that the complaint lacks the averment regarding the specific role of accused nos.2 and 3 in the management of accused no.1-firm. In support of these arguments she has relied upon the decision in the case of S.V. Muzumdar and ors. vs. Gujarat State Fertilizer Co. Ltd. and anr. [AIR 2005 SC 2436]. She further submitted that having regards to the law laid down by the Constitution Bench in the case of A.V. Venkateswaran, Collector of Customs, Bombay vs. Ramchand Sobhraj Wadhwani and anr. [AIR 1961 SC 1506], this is not a fit case to invoke the inherent powers under Section 482 of Cr.P.C. and quash and set aside the complaint against accused nos.2 and 3.

4. In the complaint the complainant specifically stated that accused no.1 is a Partnership Firm and is

in the business of extracting iron-ore for export to leading countries like Japan, China, Russia etc. and real estate and it further averred that the accused nos.2 to 4 are the present Partners of the Accused No.1 firm. The learned counsel for the petitioners invited my attention to the Partnership Deed executed on 1/4/1994 and it shows that the accused no.1-firm has the following five partners with their respective share in profit and in loss:-

	Share in Profit	Share in Loss
Shri Dipak Manharlal Rajani	5%	25%
Smt. Meena Dipak Ra Rajani	20%	2%
Mast.Bhavik Dipak Rajani (only for the benefits of partnership)	25%	-
Mast.Vikram Dipak Rajani (only for the benefits of partnership)	25%	-
Mast. Vijay Dipak Rajani (only for the benefits of partnership)	25%	-

The last three partners were shown to be the minors as on 1/4/1994 and admittedly Mr. Bhavik D. Rajani had attained majority when the subject cheque dated 30/5/2005 was issued and was dishonoured. The

statutory notice issued by the complainant was addressed to in all eight partners of the accused no.1-firm and in reply to the same Shri Shivan S. Desai the learned Advocate on behalf of the accused informed the complainant that the original deed of the partnership was corrected on 1/4/1994 and only the five family members remained as the partners of the said firm. It was also stated that Mr.Bhavik Rajani had attained majority. It would be interesting to note para 20 of the same Partnership Deed which reads as under:-

> "Each partner shall (a) diligently attend to the business of the Partnership and (b) inform the other Partners of all the affairs of the Partnership."

6. It is specifically contended by the complainant that though the cheque was signed by accused no.4, the said account is operated by accused nos.2 and 4 in the alternative. It is not known whether all these obtaining facts were brought to the notice of the learned Magistrate when he decided

either not to issue any process against accused nos.2 and 3 or discharge the process against them in the two other complaints. As observed by the Supreme Court in the case of S.V. Muzumdar (Supra), the role of accused nos.2 and 3 in relation to their responsibility in the day to day management of accused no.1-firm will be an issue which will have to be gone into by adducing evidence during the trial of the complaint and it cannot be said at this stage that there is no case made out to continue the prosecution against them. It would be totally unsafe to invoke the powers under Section 482 of Cr.P.C. and quash the proceedings against accused nos.2 and 3 at this stage.

7. Hence, the petition fails and the same is hereby rejected summarily. Ad-interim order, if any, stands vacated.

(B.H. Marlapalle,J.)